

Driver Services Request for Proposal (RFP)



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City of Fargo, City of Moorhead Driver Services RFP

Contents

Appendices	2
RFP Overview.....	3
RFP Administrators.....	3
Section 1 – Submission of Proposal.....	4
Section 2 - Qualifications of Contractor	12
Section 3 - Scope of Work and Work Areas.....	13
Section 4 - Personnel.....	16
Section 5 - Equipment	20
Section 6 - Record Keeping & Reporting	21
Section 7 - Compliance	22
Section 8 - Insurance	26
Section 9 - Drug and Alcohol Testing Program.....	27
Section 10 - Contract Term.....	27
Section 11 - Transfer / Supervisor Vehicles.....	27
Section 12 - Compensation.....	27
Section 13 - Applicable State and Local Clauses.....	28
Section 14 - Federal Clauses.....	29



City of Fargo, City of Moorhead Driver Services RFP

Appendices

- Appendix 1 – Bid Proposal Form
- Appendix 2 – Buy America Certification
- Appendix 3 – Debarment and Suspension Certification
- Appendix 4 – Lobbying Certification
- Appendix 5 – Drug-Free Workplace Act Certification
- Appendix 6 – Intentionally Left Blank
- Appendix 7 – Intentionally Left Blank
- Appendix 8 – Evaluation Form
- Appendix 9 - Intentionally Left Blank
- Appendix 10 - Intentionally Left Blank
- Appendix 11 - Intentionally Left Blank
- Appendix 12 - Intentionally Left Blank
- Appendix 13 – Revenue Hours
- Appendix 14 – Taxi Ride Authorization
- Appendix 15 – Wages & Benefits
- Appendix 16 – 13(c) labor Agreements
- Appendix 17 – Reference Release
- Appendix 18 – Seniority List



City of Fargo, City of Moorhead Driver Services RFP

RFP Overview

The Cities of Fargo and Moorhead are seeking one, qualified vendor to provide public mass transportation driver services for the Fargo-Moorhead MATBUS system. Services to be provided include driver operations and record keeping functions required by the Cities of Fargo and Moorhead, States of North Dakota and Minnesota, and the Federal Transit Administrations.

The Cities of Fargo and Moorhead provide dispatch and vehicles, including maintenance, storage and fuel for transit services.

Bidders will provide a bid for both the City of Fargo, North Dakota and City of Moorhead, Minnesota, but each City will execute a separate contract. The resulting contracts will require all bus operators be cross trained and utilized in both Cities.

The Cities of Fargo and Moorhead currently supply 61 transit vehicles for this service: 34 Fargo Fixed Route and deviated Fixed Route, 12 Moorhead Fixed Route, 15 Paratransit. Ridership annually is approximately 1.8 Million passengers between the Fargo and Moorhead fixed route systems; and approximately 54,000 on Paratransit.

The City of Fargo owns and operates a transfer terminal entitled the Ground Transportation Center (GTC), located at 502 NP Avenue, Fargo, North Dakota, which has furnished office space for one (1) office for the Contractor's supervisory staff plus 2 cubicles, and one (1) conference room that can be used for meetings and training when reserved. A shared employee break room, and restroom facilities are provided for all staff at the location. The GTC serves as a layover point for many of the fixed routes.

The Cities of Fargo and Moorhead share a combined storage and maintenance facility located at 650 23rd St N, Fargo, North Dakota, which has two (2) furnished office spaces for the Contractor. Along with a shared employee break room, locker room and restroom facilities for staff.

This project will receive federal 5307 funds, CFDA #20.507, up to 50% by Federal Transit Administration.

RFP Administrators

Julie Bommelman
Transit Director
City of Fargo
650 23rd Street North
Fargo, ND 58102
TEL: (701) 476-6737
FAX: (701) 241-8558
proposals@matbus.com

Matthew G. Peterson
Assistant Transit Director
City of Fargo
650 23rd Street North
Fargo, ND 58102
TEL: (701) 476-6660
FAX: (701) 241-8558
proposals@matbus.com

Lori Van Beek
Moorhead Transit Manager
City of Moorhead
650 23rd Street North
Fargo, ND 58102
TEL: (701) 476-6686
FAX: (701) 241-8558
proposals@matbus.com



City of Fargo, City of Moorhead Driver Services RFP

Section 1 – Submission of Proposal

1. Conditions for Responding

a. Scope

- i. The following terms and conditions shall prevail unless otherwise modified by the Cities within this RFP. The Cities reserve the right to reject any proposal, which take exception to these terms and conditions.

b. Definitions as Used Herein

- i. The terms "request for proposal, RFP, proposal, bid, offer" are synonymous and mean a solicitation of a formal sealed proposal and refer to the product required by the Request for Proposals.
- ii. The terms "City of Fargo, City of Moorhead, Cities, Cities of Fargo and Moorhead, MAT, MATBUS, Fargo Transit, Moorhead Transit, Grantee, Transit Office", are synonymous and mean the Cities of Fargo and/or Moorhead.
- iii. The terms "Bidder, Contractor, Offerer, Proposer, Vendor, Firm, Company" are synonymous and mean the offerer or vendor.
- iv. Additional Acronyms Used throughout the document
 1. GTC – Ground Transportation Center
 2. MTG – Metro Transit Garage
 3. FTA – Federal Transit Administration
 4. NDDOT – North Dakota Department of Transportation
 5. MNDOT – Minnesota Department of Transportation
 6. Collision – Contact between one or more vehicles with another vehicle or object. Interchangeable with the word Accident.
 7. AVA – Automatic Voice Announcement System
 8. AVL – Automatic Vehicle Location System
 9. Metro COG – Metropolitan Council of Governments

2. Required Competitive Procurement Proposal Form

- a. The Cities of Fargo and Moorhead will employ the competitive procurement purchase process in the award of this offer. Offers shall be submitted in two (2) separate packages. Package I shall contain twelve (12) copies and one (1) electronic copy of the "Technical Proposal". Package II shall contain twelve (12) copies and one (1) electronic copy of the "Price Offer" (which includes the spreadsheets on "Cost Summary / Bid Price" and "Estimated Budget to Support Bid Price"). Each package shall be sealed, and shall clearly reflect the specifications title, Package Number and Content, and shall reflect the vendor's name.
- b. All information must be legible. Any and all corrections and/or erasures must be initialed. Authorized respondent must sign each proposal and required information must be provided. A neatly typed document of reasonable length, following the RFP outline, is preferred. Expenses incurred in developing and



City of Fargo, City of Moorhead Driver Services RFP

submitting a proposal are borne entirely by bidder. Bidders will not include any such expenses as part of the price proposed in response to this RFP.

- c. Before completing the Bid Proposal Form, Proposers should read the entire Request for Proposals (RFP) carefully to insure that any proposals submitted are responsive to this request. Particular attention should be made of the completion of all forms enclosed and submission of proposals in required format. Failure to provide all information requested herein may cause the proposal to be rejected as nonresponsive.
- d. Proposals shall provide a concise delineation of the proposer's capability to satisfy the requirements of the RFP. A duly authorized officer of the company will sign each proposal.
- e. Bidders will provide a bid for both the City of Fargo and City of Moorhead, but each City will execute a separate contract. The resulting contracts will require all bus operators and staff/management team be cross trained and utilized in both Cities.

3. Proposal Security

a. Fargo

- i. No proposal will be considered by the City to be responsive to this request unless accompanied by a cashier's check payable to the City of Fargo by a responsible, solvent bank in the United States in an amount equal to five percent (5%) of the first year of the Fargo contract amount; or, a bond executed by a surety company authorized to transact business in the State of North Dakota in an amount equal to five percent (5%) of the first year Fargo contract amount. The first year Fargo contract amount on which this shall be computed is the Fargo Only total from the Cost Summary / Bid Price spreadsheet. Such surety will be retained by the City of Fargo if the successful proposer fails, neglects or refuses to execute the contract, or fails to commence service as required under the contract. The check or bond of the highest ranked proposer will be returned after commencement of service. The check or bond of the second highest ranked proposer will be returned after the execution of the contract with the successful proposer. The checks or bonds of all other proposers will be returned promptly after the award of the contract by the City of Fargo.

b. Moorhead

- i. No proposal will be considered by the City to be responsive to this request unless accompanied by a cashier's check payable to the City of Moorhead by a responsible, solvent bank in the United States in an amount equal to ten percent (10%) of the first year of the Moorhead contract amount; or, a bond executed by a surety company authorized to transact business in the State of Minnesota in an amount equal to ten percent (10%) of the first year Moorhead contract amount. The first year contract amount on which this shall be computed is the Moorhead Only total from the Cost Summary / Bid Price spreadsheet. Such surety will be retained by the City of



City of Fargo, City of Moorhead Driver Services RFP

Moorhead if the successful proposer fails, neglects or refuses to execute the contract, or fails to commence service as required under the contract. The check or bond of the highest ranked proposer will be returned after commencement of service. The check or bond of the second highest ranked proposer will be returned after the execution of the contract with the successful proposer. The checks or bonds of all other proposers will be returned promptly after the award of the contract by the City of Moorhead.

4. Projected Schedule

a. The following is a schedule of dates/deadlines that pertain to all proposals received:

- i. NOTE: Throughout this proposal, COB is “close of business” – this is 4:30pm CDT (Central Daylight Time).
- ii. Calendar of Events

Date	Description
08/17/2020	Cities release RFP document; publish advertisement, notify private sector
08/31/2020	Deadline for proposer’s submittal of written requests for clarification or modification of the RFP
09/09/2020	Cities’ response to written request for clarification or modification of the RFP and pre-bid conference
09/16/2020	Deadline for proposer’s submittal of written bid protests regarding the solicitation (RFP)
09/23/2020	Deadline for receipt of sealed proposals by 2:00pm CDT in the Metro Transit Garage, 650 23 rd Street North, Fargo, North Dakota 58102
10/07/2020	Cities’ review and evaluate proposals, interview finalists
10/14/2020	Deadline for proposer’s submittal of written pre-award bid protests
10/26/2020	Fargo City Commission award of contract and notice to proceed issued, contingent upon Moorhead City Council approval
10/26/2020	Moorhead City Council award of contract and notice to proceed issued, contingent upon Fargo City Commission approval
10/31/2020	Deadline for proposer’s submittal of written post-award protests
11/07/2020	Cities’ response to post-award protests
11/13/2020	Deadline for proposer’s submittal of written appeal of post-award decision to appropriate City governing board
11/23/2020	Hold hearing of appeal of post-award decision with Fargo City Commission and Moorhead City Council



City of Fargo, City of Moorhead Driver Services RFP

11/25/2020	Cities' final written determination on appeal issued. All decisions regarding protest shall be considered final.
01/01/2021	Successful proposer commences service.

5. Pre-Bid Conference

- a. A pre-bid conference will be held on September 9, 2020, at 11:30am Central Daylight Time (CDT) at the Metro Transit Garage, 650 23rd Street North, Fargo, North Dakota. All respondents are requested and urged to attend. This conference is intended to provide respondents the opportunity to make a formal presentation (limited to approximately 10 minutes per company), have answered any questions, and/or receive clarification of any requirement of the RFP. The presentation could include background qualifications/experience of their company, and why the company feels they are most qualified and should be selected to operate in Fargo-Moorhead. Please note that the full evaluation team may not be present during the pre-bid conference. The Cities of Fargo and Moorhead will review the selection process at this time. To facilitate the clarification of requirements, respondents are requested to submit questions in writing, by COB September 8, 2020 to the RFP Administrators listed on page 1.
- b. Due to the COVID-19 pandemic, the pre-bid conference will also be held virtually. If you wish to attend virtually, please email proposals@matbus.com for a virtual link to the meeting prior to September 8, 2020 COB.

6. Addenda

- a. In the event it becomes necessary to revise any part of this RFP, or if additional information is necessary to enable the Proposer to make an adequate interpretation of the provisions of this RFP, a written addendum to the RFP will be provided to each prospective proposer by mail or e-mail. Receipt of all addenda must be acknowledged by each prospective proposer as requested on the Bid Proposal Form; acknowledgements for email receipt of addenda will be done by recipient sending an email acknowledgement. Oral instructions by the City of Fargo/City of Moorhead representatives are not binding.

7. Request for Modification or Clarification

- a. Requests for clarification or modification of this RFP must be in writing. The Cities must receive any such request by COB September 8, 2020. Any request must be accompanied by all relevant information supporting the request for modification, interpretation, clarification or amendment of this solicitation.
- b. Inquiries about Fargo-Moorhead Transit services and the Request for Proposal shall be directed to the RFP Administrators listed in this document on page 1.
- c. All communications related to this RFP will be posted on our website; <http://matbus.com/doing-business/current-procurements>.

8. Bid Protest Procedures



City of Fargo, City of Moorhead Driver Services RFP

- a. General: Protests will be accepted from prospective bidders or offerors whose direct economic interest would be affected by the award of a contract or by failure to award a contract. The RFP Administrators will consider all protests or objections filed in a timely manner regarding the award of a contract, whether submitted before or after award. All protests shall be in writing and shall be supported by sufficient information to enable the protest to be considered. A protest will not be considered if it is insufficiently supported or it is not received within the time limits specified herein. Protest submissions should be concise, logically arranged, and clearly state the ground for the protest. Protests must include at least the following information:
 - i. Name, address, and telephone number of protestor.
 - ii. Identification of the solicitation or bid.
 - iii. A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents.
 - iv. A statement as to what relief is requested.
 - v. Protests should be sent electronically to proposals@matbus.com.
 - b. Protests must be filed with the Cities of Fargo and/or Moorhead in accordance with our procedures and time requirements. The protest to the Cities of Fargo and/or Moorhead must be complete and contain all the issues that the protestor believes relevant. Cities of Fargo and Moorhead will respond to each substantive issue raised in the protest. Failure to include an issue in the protest to Cities of Fargo and Moorhead will preclude raising the issue to FTA, if the protest is appealed to that agency. Following an adverse decision by Cities of Fargo and Moorhead, protestor may file a protest with FTA under certain limited circumstances listed in paragraph 13.
 - c. On occasion, when considered appropriate by the RFP Administrators an informal conference on the merits of the protest with all interested parties may be held.
9. Protests Before Award
- a. Solicitation Phase: Protests concerning the solicitation must be submitted in writing by COB September 16, 2020. If the written protest is not received by the time specified, award may be made in the normal manner unless the RFP Administrators, upon investigation, find that remedial action is required. Oral protests not followed up by a written protest will be disregarded.
 - b. Notice of a protest and the basis therefore will be given to all potential bidders or offerors.
 - c. Pre-Award Phase: When a protest against the making of an award is received after receipt of bids or proposals but prior to award, COB October 14, 2020, the RFP Administrators may determine to withhold the award pending disposition of the protest. Cities of Fargo and Moorhead will provide a written response to each material issue raised in the written protest. Notice of a protest as well as Cities of Fargo and Moorhead's response will be provided to bidders/proposers who responded to the solicitation and are in line for the award of a contract.



City of Fargo, City of Moorhead Driver Services RFP

- d. Where a written protest against the making of an award is received by the time specified (COB October 14, 2020), an award will not be made unless Cities of Fargo and Moorhead determines that:
 - i. The items to be procured are urgently required;
 - ii. Delivery or performance will be unduly delayed by failure to make award promptly; or,
 - iii. Failure to make award will otherwise cause undue harm to Cities of Fargo and Moorhead or the Federal Government.
- e. If award is made, the RFP Administrators will document the file to explain the need for an award and will give written notice of the decision to proceed with the award to the protestor and, as appropriate, to others concerned by COB October 31, 2020.

10. Protests After Award

- a. A protest received by COB October 31, 2020, shall be reviewed by the RFP Administrators, and the Legal Department. The selected contractor will, in any event, be furnished with the notice of protest and the basis therefore. When it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to Cities of Fargo and Moorhead's interest, the RFP Administrators may consider a mutual agreement with the contractor to suspend performance on a no-cost basis. A written response by the RFP Administrators will be issued by COB November 7, 2020.

11. Post-Award Appeals

- a. Appeals must be sent in writing to the Fargo City Commission and/or the Moorhead City Council by COB November 13, 2020. The Fargo City Commission and/or the Moorhead City Council will schedule a hearing between November 13, 2020 and November 23, 2020, where the appellant may be heard. The Fargo City Commission and/or the Moorhead City Council will issue Cities of Fargo and Moorhead a final written determination by November 25, 2020.
- b. The decision of the Commission and/or Council is final and no further appeals may be made.

12. Determination of Interested Party

- a. An interested party is an actual prospective bidder or offeror whose direct economic interest would be affected by award of a contract or failure to award a contract. This definition specifically excludes subcontractors and suppliers.
 - i. The ability to qualify as an actual or prospective bidder/proposer ends when the bid/proposal period ends.
 - ii. The offer received from the protestor must be technically responsive.
 - iii. The protestor must be the next in line to receive the award if the protested issues prevail.
 - iv. If not next in line, the protestor must successfully challenge all intervening offers to establish next in line status.

13. Protests to FTA



City of Fargo, City of Moorhead Driver Services RFP

- a. Under certain limited circumstances, an interested party may protest to FTA the award of a contract pursuant to an FTA grant. FTA's review of any protest will be limited to alleged failure of Cities of Fargo and Moorhead to have or follow its written protest procedures or alleged failure to review a complaint or protest.
 - i. Time for Filing
 1. An appeal to FTA must be received by FTA Region VIII within five (5) working days of the date the protester learned or should have learned of an adverse decision by the grantee or other basis of appeal to FTA. Protests should be addressed to:

U.S. Department of Transportation
Federal Transit Administration, Region VIII
12300 W Dakota Ave, Suite 310
Lakewood, CO 80228
 2. Violations of Federal law or regulation will be handled by the complaint process stated within the law or regulation.
 - ii. Submission of Protest to FTA
 1. A protestor must exhaust all administrative remedies with Cities of Fargo and Moorhead before pursuing a protest to FTA.
 2. Protests to FTA should be sent to the FTA Regional or Headquarters Office. A concurrent copy of the protest must be sent to Cities of Fargo and Moorhead.
 3. The protest filed with FTA shall:
 - a. Include the name and address of the protestor.
 - b. Identify Cities of Fargo and Moorhead and the number/title of the contract solicitation.
 - c. Contain a statement of the grounds for the protest and any supporting documentation. This should detail the alleged failure of Cities of Fargo and Moorhead to have or follow its protest procedures or the alleged failure to review a complaint or protest.
 - d. Include a copy of the local protest filed with Cities of Fargo and Moorhead and a copy of Cities of Fargo and Moorhead's decision, if any.
 - iii. Other Remedies
 1. Contractors may seek remedy in the North Dakota/Minnesota state courts, as applicable, if they desire to do so.
14. Submission of Proposal
- a. The proposals will be clearly marked as Request for Proposal for Driver Services for Public Transportation in the Cities of Fargo and Moorhead.



City of Fargo, City of Moorhead Driver Services RFP

- b. Proposals must be submitted no later than 2:00 p.m. Central Daylight Time on September 23, 2020, to the Metro Transit Garage, 650 23rd Street North, Fargo, ND 58102.
- c. Proposals received after this deadline shall not be considered and shall be returned unopened. Proposals may be withdrawn or modified prior to the proposal opening. All such transactions must be submitted and received prior to the proposal opening.

15. Selection Criteria

- a. No proposals will be considered that do not meet mandatory elements.
- b. EVALUATION PROCESS
 - i. The Cities of Fargo and Moorhead shall employ the competitive procurement purchase method in making this award. Price evaluation shall not begin until the technical evaluation is completed. The Evaluation Team consisting of representatives from of the City of Fargo, North Dakota, and the City of Moorhead, Minnesota, Metro COG, and MAT Coordinating Board will meet to review and analyze each response. At the conclusion of the meeting, the Evaluation Team members will independently rate the proposal (see evaluation form in Appendix 8) and list them in descending order. The Evaluation Team will then meet and average the ranking of the proposals.
 - ii. Required cost information to be submitted in the offer must be correct, complete and verifiable. Please complete the forms and Excel spreadsheet attached herein. Please do not protect or lock the cells in the spreadsheet. The Cities reserve the right to require detailed cost information and verification of cost information submitted in the offer and to conduct complete cost and price analysis of the submitted offer. The vendor shall submit any and all documents as may be required to support the proposed cost information and fully cooperate with the Cities in their evaluation.
 - iii. Upon review of the consolidated ranking, the committee will determine the number of the firms, in their opinion, that warrant interviews. The committee will interview the selected firm or firms. They will then determine if they feel additional firms merit interviews.
 - iv. Prohibited Contact with Proposers: Except as otherwise provided, oral communications between Evaluators and Proposers regarding procurement in progress is prohibited. Each Evaluation Team member shall report any such communication, in writing to the RFP Administrators, who shall determine, in consultation with the Fargo City Administrator/Assistant Fargo City Administrator and the Moorhead City Manager, any appropriate remedial action.
 - v. Permitted Contact with Proposers: The Evaluation Team may conduct written communications, directly or indirectly, with the Proposers. In addition, the role of the Evaluation Team may include formal interviews



City of Fargo, City of Moorhead Driver Services RFP

with the top choice(s). Evaluation Team members may have contact with proposers only in the Pre-Bid Conference scheduled for September 09, 2020. The purpose of the conference is to permit the Proposers an opportunity for questions or request clarifications. The proceedings will be formal and structured, consisting of a timed presentation by the Proposer followed by a question and answer section. In the event a proposer is unable to attend the scheduled Pre-Bid Conference, they are encouraged to make alternate arrangements for an on-site visit with the RFP Administrators, however, no formal presentations will be accepted at any time other than the scheduled Pre-Bid Conference.

c. NEGOTIATIONS

- i. The Cities may undertake concurrent negotiations with all Proposers whose offers are within the competitive range after the detailed evaluation. The Cities do, however, reserve the right to award a contract based on an original offer without any negotiations. The decision to award without negotiation may be made by the Cities if, in their opinion, preliminary evaluation of the offers indicates that the best achievable and technically acceptable offer has been received.
- ii. Concurrent negotiations with all Proposers whose offers are within the competitive range may be conducted by the Evaluation Team.
- iii. The Cities may request a Best and Final Offer (BAFO) from proposers during negotiations.
- iv. Upon completion of negotiations with all Proposers within the competitive range, the offer that best meets the requirements of the specifications and ranks the highest evaluation score, earned by its offer based on evaluation criteria stated in Appendix 8 Evaluation Criteria, will be recommended to the Fargo City Commission and the Moorhead City Council for award as the successful vendor. **The Cities will make the award to the responsible Proposer whose proposal is most advantageous to the Cities. Accordingly, the Cities may not necessarily make an award to the Proposer with the highest technical (qualifications based) ranking nor award to the Proposer with the lowest price proposal if doing so would not be in the overall best interest of the Cities.**

Section 2 - Qualifications of Contractor

1. Experience

- a. Any Proposer (firm/company) must demonstrate at least three (3) years within the past five (5) years of extensive hands-on experience involving all aspects of bus operations, which will include municipal mass transit and complimentary paratransit service. The Proposer must have a satisfactory record of performance demonstrated by providing references from clients for which Proposer has provided service. A



City of Fargo, City of Moorhead Driver Services RFP

reference list of clients will be supplied to the Cities. Additional client references may be requested by the City and will be provided by the Contractor.

- b. **Note:** Proposers will be required to sign the attached release for the Cities to obtain information from client references (Appendix 17). The Cities reserve the right to request additional information to determine the Proposers' qualifications to provide service.

2. Financial Stability

- a. The Proposer will demonstrate they have the necessary financial resources to perform as required to satisfy the contract. The Proposer will provide three years of the most recent published audited financial statements, which include a balance sheet, income statement, cash flow statement and footnotes supporting the related financial statements. If audited financials are not available, the Cities may request additional financial information including income tax returns for the past three years. If the company is a subsidiary or division of another company, Proposer will provide financial information for the past three years to present indicating their financial position and performance as a subsidiary. The Proposer will clearly communicate in its proposal any financial information which might be critical in assisting the Cities in the review process. Cost/price proposals and other financial data, such as overhead rates, etc. shall be handled as confidential data to the extent allowed under applicable law, including Minnesota Government Data Practices Act, M. S. Chapter 13, and utilized on a "need-to-know" basis for proposal evaluation. The Cities will also require the Proposer to provide its Dunn & Bradstreet number (DUNS).
- b. **Note:** Proposers will be required to sign the attached release for the Cities to obtain information from financial institution references (Appendix 17). The Cities reserve the right to request additional information to determine the Proposers' qualifications to provide service.

Section 3 - Scope of Work and Work Areas

It shall be the responsibility of the Contractor to thoroughly investigate and understand the Fargo/Moorhead MATBUS fixed route transit system and organizational structure prior to call for proposals date.

1. Fixed Route

- a. Service Hours
 - i. Monday – Friday 6:15am to 11:15pm
 - ii. Saturday - 7:15am to 11:15pm
- b. Fargo Fixed Route Hours – Appendix 13
- c. Moorhead Fixed Route Hours – Appendix 13
- d. Holiday Service Hours
 - i. There is no service on the following holidays: New Year's Day, Memorial Day (observed), Independence Day, Labor Day, Thanksgiving Day, Christmas Day and Easter Sunday (Paratransit). In addition, bus service on Christmas Eve ends at 5:15pm.
- e. Fares



City of Fargo, City of Moorhead Driver Services RFP

- i. Passengers are required to pay fares in one of the following manners:
 1. Cash
 - a. Current Fares, \$1.50 Adult / \$0.75 Discount
 - b. Current Fare Media
 - c. U-Pass College ID
 - d. Other as directed by Client
 - ii. Transfers between routes within the Fargo and Moorhead transit systems are free and accepted at any location along the route and at major transfer hubs. Transfers between Fargo and Moorhead transit systems are also free and accepted at the Ground Transportation Center. The driver issues a transfer ticket to a passenger upon request at time of boarding.
 - iii. Contractor and its employees are prohibited from soliciting or accepting any tips or gifts of any kind.
 - f. Auto Vehicle Location (AVL) and Auto Voice Announcement (AVA) System
 - i. The Contractor will be required to utilize the Cities' AVL/AVA system provided for daily operations for both fixed route and Paratransit operations. The Contractor will be required to work with the Cities in all aspects of programming, operating, training and troubleshooting of our AVA/AVL system. In the event the Cities elect to implement further technologies on-board its vehicles, the Contractor will be expected to support and utilize such innovations.
2. MAT Paratransit
- a. Overview
 - i. MAT Paratransit service is demand-response door through first door service for persons with disabilities who are ADA Paratransit eligible. Service is provided within the city limits of Fargo and West Fargo, North Dakota, and Moorhead and Dilworth, Minnesota, utilizing vehicles provided by the Cities of Fargo and Moorhead. The estimated number of revenue hours to meet demand is provided in Appendix 13.
 - ii. Each paratransit vehicle is equipped with a tablet, which interfaces directly with our software. Tablets will be utilized in the daily operation of Paratransit. The City of Fargo provides staff to create driver manifests. The contractor is required to follow, and ensure bus operators adhere to, the schedule produced. The contractor is to schedule bus operators to each run daily.
 - b. Service Hours
 - i. Monday – Friday 6:15am to 11:15pm
 - ii. Saturday - 7:15am to 11:15pm
 - iii. Sunday – 7:00am to 5:00pm
 - c. Holiday Service Hours
 - i. There is no service on the following holidays: New Year's Day, Memorial Day (observed), Independence Day, Labor Day, Thanksgiving Day, Christmas Day and Easter Sunday (Paratransit).
 - ii. Christmas Eve service ends at 5:15pm.



City of Fargo, City of Moorhead Driver Services RFP

3. Ground Transportation Center (GTC)

a. Overview

- i. The City of Fargo owns and operates the Ground Transportation Center (GTC) transfer terminal located at 502 NP Avenue, Fargo, North Dakota. GTC Procedures and Policies have been developed by the Cities.
- ii. Smoking is not allowed inside or outside the GTC facility, all GTC grounds are smoke free.
 1. This policy is strictly enforced.
- iii. The City of Fargo supplies the Contractor with 1 office space and up to 2 cubicles for their staff. The city also provides necessary computer equipment, phones, software and email access to our matbus.com domain.
- iv. The Cities contract with a security firm to provide patrols at the GTC, in addition, security personnel exchange large bills and transport deposits. The Fargo Police Department has assigned personnel to downtown Fargo available for supplementary security purposes.

4. Metro Transit Garage (MTG)

a. Overview

- i. The Cities of Fargo and Moorhead jointly own a combined storage and maintenance facility called the Metro Transit Garage (MTG) located at 650 23rd St N, Fargo, North Dakota. This facility houses the fleet of vehicles, the administrative staff, driver break and locker rooms, furnished offices for the Contractor, and City staff.
- ii. The MTG facility has both a break and locker room shared with City staff. Smoking is not allowed inside or outside the MTG building.
- iii. The Contractor's management/supervisory personnel shall be located at the MTG and/or GTC. The Cities supply furnished offices for the Contractor at the MTG. The Contractor must supply any other furniture or equipment necessary for the management/supervisory use, including computer equipment, phones, software, and email access to our matbus.com domain. Contractor's management/supervisory staff is required to have access to a cellular phone with texting capabilities and email for communication with the Cities.

5. Increase or Reduction in Service Hours

- a. The Cities of Fargo and Moorhead may, for any reason, request an increase or reduction in route hours to be provided by the Contractor for fixed route, MAT Paratransit, or other required service hours. Said increases or decreases shall not result in renegotiation of the cost per revenue hour for driver services.
- b. Management fees will be a separate line item in this proposal and the resulting contract. With the exception of a change in the number of Contractor's management staff as pre-approved by the Cities, there will not be renegotiation of the management fees in the increase or reduction of service hours.
- c. When there is a change of more than $\pm 15\%$ of revenue hours annually, there will be redistribution between the Cities of Fargo and Moorhead of the set management fee based upon percentage of total revenue hours.



City of Fargo, City of Moorhead Driver Services RFP

6. Contract Hours
 - a. Projected annual revenue hours for each year of the two-year contract period are shown in Appendix 13.
7. Fare/Revenue Collection
 - a. The Cities shall collect and retain all revenues generated by the fixed route, deviated fixed route, and paratransit transit systems. Bus operators will properly operate the existing, and any subsequent, fareboxes and ensure that the fare policies are followed. All fares collected for the system are to be retained by the Cities.

Section 4 - Personnel

1. Overview
 - a. The Contractor shall be solely responsible for the provision of and satisfactory work performance of all employees as described by this Request for Proposal or any reasonable performance standard established by the Cities of Fargo and Moorhead, and shall be solely responsible for payment of all employees' wages and benefits. Without any additional expense to the Cities of Fargo and Moorhead, the Contractor shall comply with the requirements of employee liability, worker's compensation, employment insurance and social security. The Cities of Fargo and Moorhead shall have the right to demand removal of any personnel from the Contractor's local team for just cause (as determined by the Cities). The Contractor shall not, absent prior written notice of 60 days to, and consent by the Cities, remove or re-assign any key management personnel identified in its proposal (e.g. Project Manager) at any time prior to or after execution of the contract.
 - b. The City requires the current Contractor to provide the following positions:
 - i. 1-Project/General Manager
 - ii. 1- Operations Manager
 - iii. 1- Safety Manager/Classroom Trainer
 - iv. 1- Office Clerk
 - v. 2 - Road Supervisors
 - c. Sufficient bus operators for fixed route, deviated fixed route, and Paratransit services (the Contractor's current seniority list is shown in Appendix 18).
 - d. For purposes of this RFP and the resulting contract, full-time work for managers/supervisors equates to a minimum of forty (40) hours per week.
2. Organizational Structure
 - a. Proposer must outline in the proposal the organizational structure of the company and personnel resources that are available to accommodate employee turnover, vacations and other absences without disrupting MATBUS operations, as well as demonstrate that a sufficient number of qualified personnel will be dedicated to properly operate and maintain the transit system.
 - b. Company personnel are subject to any and all rules and regulations, including the most current Drug & Alcohol regulations that are placed on the Cities of Fargo/Moorhead as a condition of receiving necessary local, state or federal funding.
3. Project/General Manager



City of Fargo, City of Moorhead Driver Services RFP

- a. The Contractor shall designate a Project/General Manager who shall oversee successful operation of the services. Due to the critical role occupied by the position of Project/General Manager, it is required that this person be identified, a detailed resume be furnished in the Proposer's response to this RFP and that this person be available to be interviewed in person by the Cities of Fargo/Moorhead evaluation team.
- b. At a minimum, the Project/General Manager must have three (3) or more years' experience managing all aspects of a municipal mass transit and complimentary paratransit operations, or a combination of higher education and transportation experience in a management/supervisory position totaling five or more years.
- c. The Project/General Manager must be computer-proficient and have a working knowledge of the Microsoft Office Suite. The Cities operate in a Windows-based operating system environment. The Project/General Manager will be required to become proficient with software programs required by the Cities (ex. AVL/AVA System, Farebox System, Video Software, Sharepoint, and etc.).
- d. The Project/General Manager must have, by the start of the contract period, medical and operator certificates & appropriate vehicle class license(s).
- e. The Project/General Manager must be able to perform his or her tasks within the working environments of an office, transit facility, maintenance facility, transit vehicles and bus stops.
- f. The following is not intended to be an all-inclusive list of the essential functions of the Project/General Manager position, but rather a general description of some of the requirements necessary to carry out the duties and responsibilities of this position.
- g. Communicate clearly and effectively, both orally and in writing, using the English language.
- h. Meet with the Cities, vendors or others on a regular basis.
- i. Work extended hours, including weekends, when necessary.
- j. Demonstrate regular and consistent attendance and punctuality.
- k. Assimilate information quickly and accurately in order to make effective day-to-day operational decisions. Additionally, provide operational reports as requested by the Cities in the timeframe denoted and to provide recommendations to improve service delivery.
- l. Prioritize tasks and manage time effectively.
- m. Ensure contract compliance.
- n. Supervisory experience with hourly employees and knowledge of Human Resources regulations is required.
- o. Create a positive work environment by providing all employees with fair and equitable supervision and encouraging professional and personal growth.
- p. Recruit, screen, and hire quality employees to ensure full effective staffing of the operation.
- q. Document employee performance, provide necessary training, and apply appropriate discipline.



City of Fargo, City of Moorhead Driver Services RFP

- r. Ensure the safety of the operations as it relates to the service delivered, the passengers utilizing the service, and the employees providing the service.
 - s. Address groups periodically to present information (City Commission/Council, civic groups, driver meetings).
 - t. This position will require an individual who can effectively interact with all levels of employees, from bus drivers to senior management, and with the general public.
 - u. Must be available to confer with the Cities' regarding weather-related cancellations or closures.
 - v. Additional duties as assigned.
4. Additional Management Team Duties
- a. The Contractor shall provide sufficient personnel to monitor drivers on the road to ensure compliance with policies and procedures. The Cities require a supervisor to be on-site during morning "roll-out" Monday through Saturday.
 - b. The following is not intended to be an all-inclusive list of the essential functions of the additional management team, but rather a general description of some of the requirements necessary to carry out the duties and responsibilities of these positions.
 - c. Monitoring of pre- and post-trip vehicle inspections.
 - d. Driver retraining after accidents, incidents, complaints, as applicable.
 - e. Video surveillance review in response to accidents, complaints, incidents or requests from the Cities, insurance companies or emergency personnel.
 - f. Training of bus operators of on-board promotions and changes in the system, or any other pertinent information the bus operators are required to know.
 - g. Regular on-site monitoring of operations at remote transfer hubs.
 - h. Written evaluation of bus operators annually.
 - i. Each and every fixed route bus operator will be observed via a ride-along at least once per quarter during all hours of operation, including early mornings, evenings and weekends. Ride-along observations can include video surveillance.
 - j. Each and every Paratransit driver shall be monitored with unannounced random spot checks at least once per month.
 - k. Consultations with newly-hired drivers must be completed within 90 days of hire, in addition to the annual evaluation (including practical demonstrations and on-site visits or ride-alongs).
 - l. Coordinate compliance with Federal, State, and local laws and assist with safety inspections and periodic audits by state or federal agencies.
 - m. Maintain or coordinate complete personnel recordkeeping (including license status, arrests, citations, traffic violations). Maintain substance abuse files.
 - n. Respond to emergencies and utilize the Vehicle Collision Procedures established by the Cities. This will also include the notification of police.
 - o. Ensures all safety regulations are being observed and all training methods are adequate and effective.
 - p. Conduct safety training and meetings. Review collision reports to reduce number and severity of collisions; maintain complete safety files, e.g., collision reports,



City of Fargo, City of Moorhead Driver Services RFP

pre/post trips paperwork, worker's compensation injuries, off-job injuries and document occurrences. Investigates complaints, collisions, and incidents.

- q. Additional duties as assigned.
5. Any bus operators proposed for Paratransit must be interviewed/screened by the City prior to being placed in service to ensure compatibility and correct fit.
6. On-Call & Organizational Structure
 - a. In addition to the Project/General Manager being on-call and reachable by a fully-functional cell phone or 2-way radio during all service hours, one additional member of the Contractor's Management Team will also always be required to be on-call during all operating hours (this second on-call duty may be rotated among the various members of the Team). In the absence of the Project/General Manager, he or she may elect to designate a member of the Management Team to function as the first point of contact for the Cities. To summarize, a total of two members of the Management Team are always expected to be on-call during operating hours.
 - b. **NOTE:** Proposers are requested to propose an organizational structure with denoted duty assignments.
7. Drivers and Training
 - a. The Contractor shall supply a sufficient number of properly qualified personnel to operate the equipment and to provide the services required. The City of Fargo/City of Moorhead reserves the right to approve all personnel positions and require the removal of any personnel from operations of the City transit system.
 - b. Training shall be the responsibility of the Contractor. All training programs must be pre-approved by the Cities and upon completion, certification maintained in the employee's qualification files. All records shall be made available to the Cities upon request. Specific hours of training and areas of coverage shall be indicated in the proposal submitted by the Contractor with this RFP. There will be a conference room available at the MTG facility, which may be scheduled in advance for training.
 - i. Recommended Training Hours:
 1. Classroom – 40 hours
 2. Behind the Wheel – 40 hours for pre-licensed operators, 80 hours for any new operators who are newly licensed.
 3. Cadet (in-service with trainer) – 40 hours
 - ii. Proposers must supply detailed training hours for Cities to review.
 - c. The Contractor's safety program must be detailed in the proposal. Additionally, the Contractor must provide its safety record for the past three years, including information such as the number and type of preventable vehicle collisions, as well as incidents resulting in potential injury or medical attention to passengers which have occurred within transit operations managed by the Contractor during the timeframe denoted above.
 - d. Meetings shall be held no less than once monthly with mandatory attendance by the Contractor's bus operators. The meeting(s) are required to be video/audio recorded and any staff member absent from the meeting must watch/listen to the recording prior to the next meeting. Staff from the Cities may request items be added to the



City of Fargo, City of Moorhead Driver Services RFP

agenda and may also attend these meetings. Pre- and post-meeting handouts shall be prepared by the Contractor and provided to the City.

- e. The driving records of bus drivers are subject to review at any time deemed necessary by the Cities or Contractor. The Cities of Fargo and Moorhead will require the Contractor to provide a current, written record on drivers from the State Motor Vehicles Department prior to employment and once annually thereafter. The Contractor is also responsible for obtaining and paying for criminal record checks on all drivers through the Bureau of Criminal Apprehension as a pre-employment step, and on an annual basis thereafter. The Cities reserve the right to approve all personnel positions and review any and all Contractor employee files. The Contractor shall include within the personnel file a signed check list indicating that the new employee has received proper training prior to entering revenue service.

8. Marketing / Promotions

- a. Marketing promotions are an important element for increasing patronage. Failure of Contractor to participate in marketing promotions will constitute non-performance. (Measure: Lack of cooperation or bus operators lack of involvement in or resistance to, promoting a marketing campaign.)

9. Payment of Taxi Rides

- a. The Contractor is responsible for payment of taxi rides under the “Guidelines for Taxi Ride Authorization Fargo-Moorhead MATBUS”; shown in Appendix 14.

10. Policies / Procedures

- a. The Contractor will accept and incorporate all local system policies and procedures for their bus operators and staff. All policies and procedures will be provided to the contractor by the Cities.
- b. This will include the Contractor to participate in our local safety plan, which currently is in draft format, but is expected to be finalized by the start of this contract.

Section 5 - Equipment

1. Vehicles

- a. Transit vehicles to be used for this contract are 35-foot and 40-foot motor buses, 25-foot cut-away buses and Ford Transit vehicle(s), and include the fareboxes, radios, security cameras, Auto Voice Announcement, and Auto Vehicle Location, etc. The City of Fargo provides all vehicle maintenance and facilities necessary to the performance of the project, including all parts, mechanic labor, equipment, service and cleaning, labor, maintenance supplies and supervision. The Cities will supply all consumables necessary to the performance of the project, including diesel fuel, gasoline, motor oil and other lubricants, anti-freeze, solvents, and cleaning. The buses are housed inside a climate-controlled area.

2. Radios

- a. All City-owned vehicles are equipped with two-way radios. Any air-time charges for the two-way radios will be paid by the applicable city. Handheld two-way radios may also be provided for the Contractor’s use as needed.

3. Security Cameras



City of Fargo, City of Moorhead Driver Services RFP

- a. Cameras are provided by the Cities in transit vehicles. The Cities also provide software for the Contractor's management team to view digital video recordings (DVR's). DVR's may be requested by the Contractor for use in monitoring/reviewing operator performance or investigating complaints, incidents and accidents.
- b. All vehicles contain a wireless download system, and Contractor's management staff can, through software, request the download of video for monitoring/reviewing operator performance or investigating complaints, incidents and accidents.

Section 6 - Record Keeping & Reporting

1. Overview

- a. The City of Fargo, City of Moorhead, North Dakota and Minnesota Departments of Transportation, and Federal Transit Administration or their designee(s) may perform audits at any time of the books, records and accounts of the Contractor. Contractor agrees to preserve, and to cause any subcontractor to preserve and make available for a period of six years after the completion of a contract, any and all financial, operations, and administrative records pertaining to this contract.
- b. The Contractor shall provide any and all reports required by the Cities.

2. Accounting / Record Keeping

- a. Accounting procedures utilized by the Contractor relative to said transit system shall be consistent with FTA National Transit Database requirements and regulations of the States of North Dakota and Minnesota Departments of Transportation.

3. Reports / National Transit Database (NTD) Sampling

- a. The Contractor shall submit required reports for all services, routes or special arrangements in a manner approved by and on forms supplied by the City.
- b. The Contractor will ensure bus operators are using the fareboxes properly to record accurate ridership data, which is used by the City.
- c. The Contractor will ensure bus operators or Contractor staff complete required forms during an NTD sampling year.
- d. The Contractor will provide any additional reports the City requires.

4. Vehicle Collision Reports

- a. The Contractor shall notify the Cities **immediately** of any vehicle collision involving a Fargo or Moorhead MATBUS vehicle or any incident which may potentially result in injury to a passenger, driver or others. The Contractor will provide further clarification or details to the Cities in writing within twenty-four (24) hours of the specifics of all vehicle collision using the forms provided by the Cities.

5. Feedback

- a. Upon receipt of any complaints, incidents, or compliments from passengers, citizens, or transit personnel, the Contractor or City staff shall enter the complaint into the Feedback system within one business day. The Feedback system will email specified staff a copy of the complaint, incident, or compliment, notifying staff to request the video download, if required, and also emails out the final complaint resolution to staff upon completion.



City of Fargo, City of Moorhead Driver Services RFP

- b. The Contractor shall investigate, and respond in writing through Feedback, all complaints, incidents, or compliments involving bus operators. Investigation shall include meeting with any employee included in the feedback report, and watching relevant video. The final resolution to the complaint must be given to the Cities within ten business days of the complaint. Contractor Project Manager and/or Operations Manager will be required to answer to citizens or passengers regarding complaints.
 - c. In the event of a discrimination complaint, the complaint must be marked as a discrimination complaint, the City provided discrimination complaint form completed and forwarded to the Mobility Manager for review and investigation.
 - i. Discrimination complaints include ADA or Title VI.
6. Meetings
- a. The Cities hold staff meetings weekly, either in person or virtually, for purposes of discussing problems and solutions and maintaining open and frequent communications with the Contractor. Occasionally additional meetings may be required, especially at the beginning of the contract. Unless otherwise notified, Contractor's Project/General Manager or other employee with decision making authority will be required to attend all meetings.

Section 7 - Compliance

- 1. Penalties for Non-compliance
 - a. Service requirements outlined in this section will be closely monitored and enforced by the Cities. All penalties will be assessed in writing to the Contractor within fifteen (15) working days of awareness of the violation. The written notice will include recommendations and specific time constraints for the Contractor to remedy the situation.
 - b. Qualified Bus Operators / Sufficient Personnel
 - i. The Cities will not pay for any hours of service provided by personnel who do not meet the minimum qualifications for bus operators
 - ii. The Cities will not pay for Contractor staff hours while the position is not filled or being provided.
 - 1. Example 1: If the Operations Manager leaves employment and no one has filled the vacancy, the City will have their management fees reduced by the employee's hourly/salary wage for all hours not worked.
 - 2. Example 2: If the Safety Manager has to drive a route as the Contractor does not have enough bus operators, the City will have their management fees reduced by the employees hourly/salary wage for all hours not worked.
 - iii. The Contractor is required to provide sufficient personnel to meet the required service hours.
- 2. On-Time Performance
 - a. Fixed Route



City of Fargo, City of Moorhead Driver Services RFP

- i. The Contractor is required to maintain a daily 90% on-time performance measure for each route. In the event the Contractor does not meet an on-time performance measure of the 90% for each route, the City will deduct \$250.00 per route that does not meet the performance measure for that day.
 1. A route is defined by all trips for a specific route on that day.
 - ii. If the Contractor can provide a reasonable reason (ex. Weather, Construction/Detours, etc.) the route(s) failed to meet the on-time performance measure, the City will not hold the Contractor liable.
- b. Paratransit
- i. The Contractor is required to maintain a daily 95% on-time performance measure for each run. The City will deduct \$250.00 per run that does not meet the on-time performance measure.
 1. A run is defined by all trips within a bus operator's daily schedule.
 - ii. If the Contractor can provide a reasonable reason (ex. Weather, Construction/Detours, etc.) the route(s) failed to meet the on-time performance measure, the City will not hold the Contractor liable.
- c. Missed Trips
- i. A missed trip is defined as "a trip missed due to bus operator's error or deliberate delay by a bus operator". Missed trips are documented in our software. For every scheduled trip of a bus route that is a "missed trip", the Cities will deduct \$250 per trip from the payment to the Contractor for that month.
 - ii. Exceptions to a "missed trip" are: delays due to mechanical problems, inclement weather, construction, trains, loading persons with mobility devices, incidents, or accidents.
 - iii. The Cities will not pay for service which has been cancelled due to inclement weather - this includes driver's wages.
- d. Traffic Violations
- i. Bus operators who ignore safety and choose to violate traffic rules (speed, run a red light, pass in a no-passing zone, etc.) will not be tolerated. A fine of \$500.00 will be assessed to the Contractor for each citation or infraction a bus operator receives while driving a City vehicle. Bus operators are financially liable for each citation or infraction they receive.
- e. Vehicle Collisions / Passengers/Others Injuries
- i. In the event of a transit vehicle collision, the Contractor's representative shall immediately contact the Cities' representative. The mechanic on duty will determine if a replacement vehicle will be needed.
 - ii. In the event of a vehicle collision that will interrupt service for more than one run, the Contractor is required to immediately put a replacement bus operator on the affected route.
 - iii. In the event of a vehicle collision where a bus operator is involved in a chargeable/preventable collision or an incident with injuries or potential injuries that were caused by the actions of the bus operator, a Collision/Injury



City of Fargo, City of Moorhead Driver Services RFP

Review Committee consisting of City representatives (Fargo Transit Director, Fargo Fleet Services Manager and Moorhead Transit Manager or their designees), the Contractor's Project/General Manager, and one other Contractor Management Team Member, will determine if said vehicle collision or incident is deemed chargeable/preventable.

- iv. A chargeable/preventable collision is defined as: "A motor vehicle collision in which a bus operator fails to do everything reasonably possible to prevent the collision from occurring." Factors taken into consideration when determining preventability are: (1) the type of collision, (2) the degree of injury and/or how many injuries, (3) the degree of damages, (4) the pre-collision actions of the parties involved, and (5) incidents reviewed on video cameras. The contractor will adhere to the decisions(s) determined by the committee.
 - v. The penalty fee for all (including the first collision or incident by a bus operator) chargeable/preventable collision and/or incidents ranges from a minimum of \$500 to a maximum of \$10,000. Penalties imposed will be based on the severity of the collision and will be determined by the Collision Review Committee. The fee is to be credited on the respective City's invoice based on the service (Paratransit or Fixed Route).
 - vi. In the event the Collision Review Committee determines that the occurrence is a second, third or greater chargeable/preventable collision, caused by the action(s) of the same bus operator, that has occurred during the term of the contract or during the prior three (3) year period, whichever period is shorter, then the committee may determine that the Contractor should pay a higher penalty for the occurrence. The committee, in its sole discretion, shall determine the penalty payable for such occurrence, provided, however, that the penalty shall be a minimum of \$500 and a maximum of \$10,000. The committee, in establishing the penalty payable for such occurrence, may consider the extent of damage occurring, the extent to which the occurrence could have readily been prevented, the exposure to the City of liability caused by such occurrence, the harm to the reputation of the City and its transit system.
- f. Collision/Injury Review Committee
- i. The Vehicle Collision/Injury Review Committee will meet monthly.
 - ii. The Vehicle Collision/Injury Review Committee will by majority vote agree on whether the collision is insignificant, preventable or unpreventable.
 - iii. Insignificant collisions will be determined by the committee. However, the following guidelines apply:
 1. Damage is limited to a scratch or scuff to wheel flares
 2. Damage is limited to a scratch or scuff to tires
 3. Damage limited to a scratch or scuff to bumper
 4. Damage is limited to a tap, scratch or scuff to the mirror, including the mirror folding in, with no damage to the mirror



City of Fargo, City of Moorhead Driver Services RFP

5. Damage is limited to yellow paint transfer from rubbing against a stanchion or bollard at the GTC or MTG.
6. There was no damage to other property,
- iv. The Collision/Injury Review Committee can table the review on a specific collision to the next scheduled monthly meeting if sufficient information is not yet available, such as a repair estimate or police report.
- v. The 15-day notification period for assessing a penalty will not apply to this section. Rather, the collision/injury will be reviewed at the monthly Vehicle Collision/Injury Review Committee meeting when all information needed to make a decision is available. Following the review and decision by the committee, the Project/General Manager will provide the Cities a credit on their monthly billing for any penalties imposed by the Committee.
- vi. All preventable collisions/injury will be charged a penalty minimum of \$500 and maximum of \$10,000. The majority decision of the Committee will be used to determine approval of the penalty. The contractor will adhere to the decisions(s) determined by the committee. There will be no fine assessed for a collision determined by the Committee to be insignificant.
- vii. A form shall be completed for each collision/injury outlining the review meeting and results for each collision/injury.
- g. Uniforms
 - i. In the event a Contractor employee is in non-compliance with set uniform dress code, a penalty of one hundred (\$100) will be assessed per infraction.
 - ii. The City will provide uniforms for all bus operators and road supervisors.
 1. Refer to written uniform policy.
- h. Documentation
 - i. In the event the Contractor fails to provide the Cities with requested documentation as per contract will constitute non-performance and there is a penalty of one thousand dollars (\$1000) per infraction. This includes documentation on road supervision and spot checks to monitor bus operator performance – detailed documentation must be maintained and submitted to the Cities as requested within 10 business days of request.
 - ii. Contractor will maintain a master file with all bus operator memos and safety meeting content.
- i. Use of City Owned Equipment/Vehicles
 - i. City owned equipment, including vehicles, is strictly for City business. In the event a Contractors' employee uses a City owned vehicle for any personal use, including taking the vehicle to their personal residence, there is a penalty of five hundred dollars (\$500) per infraction.
- j. Public Address System
 - i. Use of the Public Address System along fixed routes is required under federal law, specifically The Americans with Disabilities Act (ADA). If the Auto Voice Announcement system is not operating, the bus operator must make manual announcements for compliance with the ADA. For every infraction by a bus



City of Fargo, City of Moorhead Driver Services RFP

operator per route, where the Public Address System is not being utilized for major point announcements, there is a penalty of five hundred dollars (\$500).

Section 8 - Insurance

1. The City shall provide casualty insurance on the buses and equipment it deems necessary and Contractor shall have no responsibility to provide such coverage. City shall provide self-insurance or otherwise, liability insurance coverage, limited, however, to the minimum amount of \$2 Million per claim or the statutory amount or amounts established by the State of North Dakota/State of Minnesota laws governing municipal liability, whichever is greater. Any applicable insurance deductibles for City-provided insurance shall also be paid by the respective city. The City insurance shall be primary. The Contractor shall be listed as an insured on the City's casualty insurance for the buses and equipment. Coverage by the North Dakota Insurance Reserve Fund or Minnesota League of Cities Insurance Trust is deemed to satisfy this provision.
2. The Contractor shall be required to obtain and keep in force during the terms of operation covered by this proposal Employment Practices Liability Insurance, North Dakota and/or Minnesota Worker's Compensation and Employer Liability Insurance, applicable Unemployment Insurance, and the Performance Bond, all as provided more fully below. Certificates evidencing the required insurance will be furnished to the Cities prior to commencing any work under this contract. If the Contractor does not currently meet the requirements listed below, the Contractor shall submit a letter from a reputable insurance agent stating intent to provide insurance for the prescribed coverage.
3. The Contractor shall be required to obtain and keep in force during the terms of operation covered by this contract an Employment Practices Liability Insurance (EPLI) policy in the minimum amount of \$2 Million per person and in the aggregate. EPLI is intended to cover liability for actions of the driver other than operating the vehicle, such as sexual harassment, discrimination, or other non-driving risks associated with employment. The Cities must be listed as additional insureds on the Contractor's EPLI policy. Contractor maintains a self-insurance program that includes coverage for such EPLI risks, which self-insurance program and the funding for such program, is hereby deemed to satisfy this coverage requirement.
4. North Dakota and/or Minnesota Worker's Compensation and Employer Liability Insurance shall be set at the limits established by the States of North Dakota and Minnesota.
5. Insurance deductibles are the responsibility of the party providing the insurance policy.
6. Each policy of insurance shall contain the following clauses: "It is agreed that these policies shall not be canceled nor the coverage reduced until thirty (30) days after the City has received written notice of such cancellation or reduction by certified mail."
7. Contractor will provide the City documentation proving insurance coverage, in the form of a Certificate of Insurance, within 30 days of notice of contract award or 10 days before commencing transportation service, whichever occurs first.
8. Contractor shall provide a bond for 100% of the annual contract cost for the City, payable to the City. The bond will be renewed on an annual basis for the term of the contract. The



City of Fargo, City of Moorhead Driver Services RFP

cost for the bond amount will be reimbursed by the City annually upon receipt of the bond and copy of payment receipt.

9. The Cities of Fargo and Moorhead shall be named as additional insured on all liability policies of Contractor.

Section 9 - Drug and Alcohol Testing Program

1. The Contractor is responsible for compliance with all approved or pending Federal Transit Administration regulations with regard to drug and alcohol testing – 49 CFR Parts 40 and 655. The Contractor shall submit with the proposal any current drug/alcohol testing programs in place. Contractor shall also submit a list of proposed test sites, Medical Review Officer, and Substance Abuse Professionals with the proposal (refer to Appendix 1, Section 3) and annually thereafter along with the federally-required annual MIS report.

Section 10 - Contract Term

1. The term of any agreement arising from this RFP shall be for the two-year period January 1, 2021, through December 31, 2022. The base contract may be renewed for three additional one-year periods at a rate mutually agreed upon between the Cities of Fargo and Moorhead, and the Contractor. The negotiated rate for each additional extension period cannot exceed increases demonstrated by the Consumer Price Index (CPI) for All Urban Consumers for Midwest Region Size Class B/C Services for the percent change for the previous twelve months.
2. In the event the Contractor or City feels there are circumstances requiring a wage increase above the CPI, the Contractor or City may negotiate the rate.

Section 11 - Transfer / Supervisor Vehicles

1. The Cities will provide up to 5 vehicles to transport Fargo and Moorhead bus operators to their respective routes or for road supervisor duties. The vehicles are owned by Fargo and Moorhead, leased to and insured by Fargo. Any transfers necessary beyond that will be the sole responsibility of the Contractor. The transfer vehicles are not to be utilized in any other manner - i.e. personal use (see Non-Performance Penalties).

Section 12 - Compensation

1. The Cities will reimburse the Contractor for services provided under contract based upon the agreed upon hourly rate per bus revenue hour for fixed route and agreed upon rate per revenue hour for Paratransit, and a monthly fee for management. Bus revenue hours shall mean the hour's service is available to passengers as set forth in the schedules included in the Appendices. In all cases, bus revenue hours exclude the time in which the buses travel to/from the storage facility to the beginning/ending point of the fixed route service and exclude time traveled to the first pick-up and from the last drop-off for Paratransit service.
2. All payments made to the Contractor shall be made subsequent to the end of each month service is actually rendered and in accordance with Cities billing procedures. Payment in full shall be made within thirty (30) days upon submission by the Contractor to the Cities of an itemized per day accounting of revenue hours by service type for the reporting period.



City of Fargo, City of Moorhead Driver Services RFP

3. Contractor should specify in the proposal the price per hour that is proposed for special bus arrangements requested by the Cities beyond those regularly scheduled hours of operation, including emergencies such as shuttles, floods, tornados, etc. This proposed rate will be all inclusive. The Special Rate will be all inclusive except for travel and lodging cost to bring in additional buses and personnel from other cities when necessary - such expenses would be negotiated based on event. The Special Rate specifically excludes the Project/General Manager or Management Team members driving for route timings, bus stop locations, route detour assistance, and other necessary operational functions, including promotional/marketing functions. With respect to marketing/promotional functions, Cities will pay the Special Rate, but has the exclusive right to choose whether a manager, supervisor, or driver will complete the service. Cities shall coordinate with Contractor with respect to selection of Contractor employee.
4. All billings submitted will be separated by the City of Fargo and the City of Moorhead in a prescribed format. In addition, only the City of Fargo will be billed for all Paratransit services.

Section 13 - Applicable State and Local Clauses

1. Disclaimer of Liability/Hold Harmless
 - a. Contractor shall defend, indemnify and save harmless the City, its officers, agents and employees, from any and all claims, demands, damages, costs, expenses, judgments, or liability arising out of Contractor's performance under this contract or attempted performance of the provisions hereof, excepting any and all claims demands, damages, costs, expenses, judgments, or liability arising out of Contractor's operation of motor vehicles owned by City and excepting any and all claims, demands, costs, expenses, judgments, or liability arising out of Contractor's operation and occupation of the Ground Transportation Center and/or the Metro Transit Garage owned by Cities. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for claims demands damages costs, expenses or judgments resulting from the gross negligence or willful misconduct of City.
2. City shall defend, indemnify and save harmless the Contractor, its officers, agents and employees, from any and all claims, demands, damages, costs, expenses, judgments, or liability, up to a maximum amount, including attorney fees and other costs of defense, of \$2 Million per claim, arising out of Contractor's operation of motor vehicles owned by City and from any and all claims, demands, costs, expenses, judgments, or liability arising out of Contractor's operation and occupation of the Ground Transportation Center and/or the Metro Transit Garage owned by Cities, up to a maximum amount, including attorney fees and other costs of defense, of \$2 Million per claim. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for claims demands damages costs, expenses or judgments resulting from the gross negligence or willful misconduct of Contractor and from acts or failures to act of Contractor relating to things other than the Contractor's operating of motor vehicles owned by City.
3. Law Governing



City of Fargo, City of Moorhead Driver Services RFP

- a. All contractual agreements shall be subject to, governed by, and construed according to the laws of the States of North Dakota and Minnesota, as applicable.
4. Subletting of Contract
 - a. The contract shall not be sublet except with the written consent of the City. No such consent shall be construed as making the City a party to such subcontract, or subjecting the City to liability of any kind to any subcontractor. No subcontract shall, under any circumstances, relieve the Contractor of his liability and obligation under his contract, and all transactions with the City must be through the General Contractor.
5. Assignment/Transfer of Interests
 - a. There shall be no assignment/transfer of interests or delegation of Contractor's rights, duties or responsibilities of Contractor under the contract without the prior written approval of the City.
6. Severability
 - a. In the event any provision of the contract is declared or determined to be unlawful, invalid or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions of the contract and each provision of the contract will be and is deemed to be separate and severable from each other provision.
7. Regulatory Requirements
 - a. The Contractor shall comply with all Federal, State, and local licensing, training, testing and/or regulatory requirements (including permits) for the provision of the transit services.
8. The Contractor shall be appropriately licensed for the work required. The cost for any required licenses or permits shall be the responsibility of the Contractor. Contractor is liable for any and all taxes due as a result of the contract.
9. Responsible Firms
 - a. Nothing herein is intended to exclude any responsible firm or in any way restrain or restrict competition. On the contrary, all responsible firms are encouraged to submit proposals.
10. Publication, Reproduction and Use of Material
 - a. No custom material produced in whole or in part under the Contract shall be subject to copyright in the United States or in any country. The and Federal Transit Administration shall have authority to publish, disclose, distribute and otherwise use, in whole or in part, any custom material prepared under any contract.

Section 14 - Federal Clauses

Fly America Requirements – Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for



City of Fargo, City of Moorhead Driver Services RFP

US Government financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

Charter Bus Requirements – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall comply with 49 USC 5323(d) and (g) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, “Charter Service,” 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.

School Bus Requirements – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Pursuant to 69 USC 5323(f) or (g) as amended by MAP-21, 23 USC 133, 23 USC 142, and 49 CFR 605, recipients and subrecipients of FTA assistance shall not engage in school bus operations exclusively for transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients shall not use federally funded equipment, vehicles, or facilities. Violations. If a Recipient or any Third Party Participant that has operated school bus service in violation of FTA’s School Bus laws and regulations, FTA may: (1) Require the Recipient or Third Party Participant to take such remedial measures as FTA considers appropriate, or (2) Bar the Recipient or Third Party Participant from receiving Federal transit funds.

Energy Conservation – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Clean Water – Applicability – All Contracts and Subcontracts over \$150,000. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

Lobbying – Applicability – Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$100,000 Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49



City of Fargo, City of Moorhead Driver Services RFP

CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Access to Records and Reports – Applicability – As shown below. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.



City of Fargo, City of Moorhead Driver Services RFP

6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the recipient and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

Clean Air – Applicability – All contracts over \$150,000. 1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. 2) Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

Recycled Products – Applicability – All contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds. The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

Contract Work Hours & Safety Standards Act – Applicability – Contracts over \$250,000

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard



City of Fargo, City of Moorhead Driver Services RFP

workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - the recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.

(4) Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

No Government Obligation to Third Parties – Applicability – All contracts except micropurchases (\$10,000 or less, except for construction contracts over \$2,000)

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the



City of Fargo, City of Moorhead Driver Services RFP

Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate. (3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination – Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$250,000

The CITY reserves the right to cancel any contract for cause upon written notice to the Contractor. Cause for cancellation will be documented failure(s) of the contractor to provide services in the quantity and/or quality required. Notice of such cancellation will be given with sufficient time to allow for the orderly withdrawal of the Contractor without additional harm to the participants or the CITY.

The CITY may cancel or reduce the amount of service to be rendered if there is, in the opinion of the City Council, a significant increase in local costs; or, in the opinion of the City Council, insufficient state or federal funding available for the service, thereby terminating the contract or reducing the compensation to be paid under the contract. In such event, the CITY will notify Contractor in writing ninety (90) days in advance of the date such actions are to be implemented.

CONTRACTOR is hereby notified that the CITY Transit system pursuant to this agreement is dependent upon the necessary receipt of local, state and federal funding.

In the event of any termination, the CITY shall pay the agreed rate only for services delivered up to the date of termination. The CITY has no obligation to Contractor, of any kind, after the date of termination. Contractor shall deliver all records, equipment and materials to the CITY within 24 hours of the date of termination.

Government-Wide Debarment and Suspension (Nonprocurement) – Applicability – Contracts over \$25,000 The Recipient agrees to the following:

(1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, 2 U.S. OMB, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA “System for Award Management,” <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the “System for Award Management” at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debar, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA



City of Fargo, City of Moorhead Driver Services RFP

Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

Contracts Involving Federal Privacy Act Requirements – Applicability – When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Civil Rights Requirements – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the underlying contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply



City of Fargo, City of Moorhead Driver Services RFP

with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with FTA Circular 4704.1 other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer”. (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate,



City of Fargo, City of Moorhead Driver Services RFP

participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as “Disadvantaged Business Enterprises” (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of Map-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under Map-21 and previous legislation,

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial



City of Fargo, City of Moorhead Driver Services RFP

Assistance,” 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of “employer,” (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37, (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27, (c) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35, (f) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36, (g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194, and (j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of



City of Fargo, City of Moorhead Driver Services RFP

public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,

j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

Breaches and Dispute Resolution – Applicability – All contracts over \$250,000 Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved. Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Transit Employee Protective Provisions – Applicability – Contracts for transit operations except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)



City of Fargo, City of Moorhead Driver Services RFP

Public Transportation Employee Protective Arrangements. The Recipient agrees that 49 U.S.C. § 5333(b) requires employee protective arrangements to be in place as a condition of award of FTA assistance made available or appropriated for FTA programs involving public transportation operations. U.S. DOL recognizes the following categories of arrangements:

(1) U.S. DOL Certification. When its Project involves public transportation operations and is financed with funding made available or appropriated for 49 U.S.C. §§ 5307, 5309, 5312, 5337, or 5339, as amended by Map-21, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a Certification of employee protective arrangements before FTA may provide financial assistance for the Project. Therefore, the Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that: (a) It must carry out the Project as provided in its U.S. DOL Certification, which contains the terms and conditions that U.S. DOL has determined to be fair and equitable to protect the interests of any employees affected by the Project, (b) It must comply with 49 U.S.C. § 5333(b), and any future amendments thereto, (c) It will follow the U.S. DOL guidelines, “Guidelines, Section 5333(b), Federal Transit Law,” 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing, (d) It must comply with the terms and conditions of the U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, including: 1 Alternative comparable arrangements U.S. DOL has specified for the Project, 2 Any revisions U.S. DOL has specified for the Project, or 3 Both, and (e) It must comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement for the Project: 1 The U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, 2 The documents cited in that U.S. DOL certification for the Project, 3 Any alternative comparable arrangements that U.S. DOL has specified for the Project, and 4 Any revisions that U.S. DOL has specified for the Project,

(2) Special Warranty. When its Project involves public transportation operations, and is financed with funding made available or appropriated for 49 U.S.C. § 5311, as amended by Map-21, for former 49 U.S.C. § 5311 in effect in FY 2012, or a previous fiscal year, or for section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, U.S. DOL will provide a Special Warranty for those projects, including projects under the Tribal Transit Program. Therefore, the Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that: (a) It must comply with Federal transit laws, specifically 49 U.S.C. § 5333(b), (b) Follow the U.S. DOL guidelines, “Guidelines, Section 5333(b), Federal Transit Law,” 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing, (c) It will comply with the U.S. DOL Special Warranty for its Project that is most current on the date when it executed the Underlying Agreement, and documents cited therein, including: 1 Any alternative comparable arrangements U.S. DOL has specified for the Project, 2 Any revisions U.S. DOL has specified for the Project, or 3 Both, and (d) It will comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement: 1 The U.S. DOL Special Warranty for its Project, 2 Documents cited in that Special Warranty, 3 Alternative comparable arrangements U.S. DOL specifies for the Project, and 4 Any revisions that U.S. DOL has specified for the Project, and

(3) Special Arrangements for 49 U.S.C. § 5310 Projects. The Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations



City of Fargo, City of Moorhead Driver Services RFP

will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not “necessary or appropriate” to apply the conditions of 49 U.S.C. § 5333(b) to Subrecipients participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make the following exceptions: (a) FTA will make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and (b) FTA reserves the right to make other exceptions as it deems appropriate.

Disadvantaged Business Enterprise (DBE) – Applicability – Contracts over \$10,000 awarded on the basis of a bid or proposal offering to use DBEs

- a. For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:
- b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
 - a. Withholding monthly progress payments;
 - b. Assessing sanctions;
 - c. Liquidated damages; and/or
 - d. Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).
- c. Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days (payment required within 10 days or paying interest at 1 ½ percent per Minnesota State Statute 471.425 subd. 4a) from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient’s written consent; and that, unless the recipient’s consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).
- d. In connection with the performance of this service, the Contractor will cooperate with the CITY in the utilization of disadvantaged business enterprises including women-owned business enterprises for the duration of the contract and will use its best efforts to insure that disadvantaged business enterprises have the maximum practicable opportunity to compete for subcontract work. In order to insure that a fair proportion of the purchases of supplies and services is placed with disadvantaged business enterprises, the Contractor agrees to take affirmative action to identify disadvantaged business firms, solicit bids or quotations from them for supplies and services related to this proposal.



City of Fargo, City of Moorhead Driver Services RFP

- e. The Contractor agrees to meet any goals established by CITY for purchases pertaining to this Contract to the best of the Contractor's ability and will provide the CITY with the necessary certification and records for reporting purposes. When the majority of the contract is labor, which is not a contracting opportunity, DBE goals will not be set but Contractors are encouraged to use DBE businesses.
- f. The CONTRACTOR will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- g. The contractor must promptly notify the CITY whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the CITY.
- h. Fostering Small Business Participation:
 - a. The CITY has established a small business element to its DBE program, pursuant to 49 CFR 26.39. This program aims to provide opportunities and foster small business enterprises (SBE)/participation in contracting with the CITY. This program is race- and gender- neutral, however SBEs can also count towards DBE goals.

Prompt Payment – Applicability – All contracts except micropurchases \$10,000 or less, (except for construction contracts over \$2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

Incorporation of Federal Transit Administration (FTA) Terms – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

Drug & Alcohol Abuse and Testing – Applicability – Operational service contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The Contractor agrees to comply with the following Federal substance abuse regulations: a. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants), "



City of Fargo, City of Moorhead Driver Services RFP

49 C.F.R. Part 32, that implements the Drug-Free Workplace Act of 1988 as amended, 41 U.S.C. §§ 8103 et seq., and 2 CFR part 182, b. Alcohol Misuse and Prohibited Drug Use. FTA Regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 USC 5331, as amended by Map-21, 49 CFR part 40, 49 USC chapter 53, 49 CFR Part 655, to the extent applicable.

Other Federal Requirements:

Full and Open Competition - In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be conducted in a manner that provides full and open competition.

Prohibition Against Exclusionary or Discriminatory Specifications - Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

Conformance with ITS National Architecture - Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

Access Requirements for Persons with Disabilities - Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Notification of Federal Participation - To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

Interest of Members or Delegates to Congress - No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

Ineligible Contractors and Subcontractors - Any name appearing upon the Comptroller



City of Fargo, City of Moorhead Driver Services RFP

General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

Other Contract Requirements - To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

Compliance With Federal Regulations - Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Real Property - Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Access to Services for Persons with Limited English Proficiency - To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

Environmental Justice - Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-



City of Fargo, City of Moorhead Driver Services RFP

Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

Environmental Protections - Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

Geographic Information and Related Spatial Data - (NOT APPLICABLE TO THE TRIBAL TRANSIT PROGRAM) Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Geographic Preference - All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201).

Federal Single Audit Requirements - For State Administered Federally Aid Funded Projects Only Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements



City of Fargo, City of Moorhead Driver Services RFP

of OMB Circular A-133 may result in suspension or termination of Federal award payments. Catalog of Federal Domestic Assistance (CFDA) Identification Number The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

Veterans Preference - As provided by 49 U.S.C. 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients: (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

Safe Operation of Motor Vehicles

a. Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles, and (2) Including a "Seat Belt Use" provision in each third party agreement related to the Award. b. Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with: (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225), (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (a) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award, (b) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and (c) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

Catalog of Federal Domestic Assistance (CFDA) Identification Number - The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and



City of Fargo, City of Moorhead Driver Services RFP

award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

The CFDA number for the Federal Transit Administration - Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

Organizational Conflicts of Interest - The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.



City of Fargo, City of Moorhead Driver Services RFP